

**NC COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Clarion Hotel
320 Hillsborough Street
Raleigh, NC

February 15, 2007

Attending

Commission Members: Pender McElroy, Lois Batton, Laura Coker, Dorothy Rose Crawford, Pearl Finch, Mazie T. Fleetwood, Ann Forbes, Paul Gulley, MD, Buren Harrelson, Ellen Holliman, George Jones, Martha Macon, Martha Martinat, Floyd McCullouch, Connie Mele, Emily Moore, Jerry Ratley, Anna Marie Scheyett, Carl Shantzis, Ed.D., CSAPC, William Simms, MD, Fredrica Stell, Marvin Swartz, MD

Commission Members Excused: Clayton Cone, Dr. Richard Brunstetter, Judy Lewis, Tom Ryba

Ex-Officio Committee Members: Peggy Balak, Deby Dihoff, Bob Hedrick, Robin Huffman

DMH/DD/SAS Staff: Mike Moseley, Leza Wainwright, Dr. Michael Lancaster, Steve Hairston, Denise Baker, Marter T. Hester, Cindy Kornegay, Andrea Borden, Susan Kelley, Chris Phillips, Monica T. Jones, Sonya Brown, Dick Oliver, Mabel McGlothlen, Lisa Haire, Jim Jarrard

Others: Stephanie Alexander, Ann Rodriguez, Michael Glass, Miranda Brook, CO Trottier, Frank Perry, Kent Earnhardt, Jim Shaheen, Louise G. Fisher, John L. Crawford

Handouts:

- 1) MH/DD/SAS External Advisory Team
- 2) DMH/DD/SAS State Plan 2007-2010 Priority Plan Objectives
- 3) Summary of Results from Strategic Planning Retreat
- 4) Town Hall Meeting – March 7, 2007 (Kenansville, NC)
- 5) Resolution: Assuring Quality and Accountability for Enhanced Services
- 6) Resolution: Screening, Triage and Referral Process
- 7) Untitled Resolution: Distributed by Martha Martinat
- 8) NC Providers Council Comments on Endorsement Rules (10A NCAC 26C .0700)

Mailed Out Packet:

- 1) Draft November 16, 2006 Commission Meeting Minutes
- 2) Draft January 17, 2007 Rules Committee Meeting Minutes
- 3) Draft January 18, 2007 Advisory Committee Meeting Minutes
- 4) Proposed Adoption of 10A NCAC 26C .0600 – Removal of LME Functions
- 5) Proposed Adoption of 10A NCAC 27G .0212 – Disclosure of Financial Interest
- 6) Proposed Adoption of 10A NCAC 27I .0102 and .0201 – LME Accreditation
- 7) Proposed Adoption of 10A NCAC 27G .0211 – Provider Accreditation

- 8) Proposed Repeal of 10A NCAC 27G .0700 – Accreditation of Area Programs and Services
- 9) Proposed Adoption of 10A NCAC 27I .0300 – Uniform Portal
- 10) Proposed Repeal of 10A NCAC 28I .0401 Firearms – State Facilities
- 11) Proposed Adoption of 10A NCAC 28I .0402 Firearms – State Facilities
- 12) Proposed Repeal of 10A NCAC 27G .1500 – Intensive Residential Treatment
- 13) Proposed Adoption of 10A NCAC 26C .0700 – Requirements for Endorsement of Providers of MH/DD/SA Services
- 14) Presentation entitled ***“Training for Employees of Establishments where Products Containing Pseudoephedrine are Sold”***
- 15) November 16, 2006 Commission Meeting Hand Outs (PDF Attachments)
 - Memorandum on the Training and Transaction Log Requirements for the Sale of Certain Pseudoephedrine Products in North Carolina
 - Presentation on ***“Adults with Mental Illness in Adult Care Homes”***
 - Mental Illness Over-Represented in Jails & Prisons
 - MH/DD/SA Transformation Update Town Hall Meeting
 - Workforce Development Work Plan Subcommittee Membership List
- 16) January 18, 2007 Advisory Committee Meeting Hand Outs
 - Workforce Development – Proposed Focus Group Site (Attachment I)
 - NC Population Growth 2000-2010 (Attachment II)
 - Presentation entitled ***“NC Commission on Workforce Development – NC The State of Minds”*** (Attachment III)
 - NC Commission on Workforce Development State of the Workforce: Strategic Policy Issues (Attachment IV)
 - NC Licensing Boards and Licensed Professionals
 - Data Request form

Called to Order

Chairman Pender McElroy called the meeting to order at 9:35am. Invocation was delivered by Fredrica Stell.

Chairman McElroy reminded the Commission members to complete and return their ethics forms. He also issued an ethics reminder that members should abstain from voting if there is an issue on the agenda which may present the appearance of a conflict of interest to anyone.

Chairman McElroy announced Mary Kelly’s resignation from the Commission and proceeded to read her resignation letter to the Commission. Chairman McElroy requested that a motion be made to express appreciation to both Ellen Russell and Mary Kelly for their service on the Commission.

Upon motion, second and unanimous vote, the Commission approved the recommendation to express its appreciation of the contributions of Ellen Russell and Mary Kelly.

Chairman McElroy proceeded to welcome everyone and asked the Commission members, Division staff, and other attendees to introduce themselves.

Approval of Minutes

Upon motion, second, and unanimous vote, the Commission approved the minutes of the November 16, 2006 Commission meeting with the following changes:

- 1) Add Martha Macon's name to the Attendance section.
- 2) Under Call to Order change, Senator Janet Cowell from Forsyth County **to** Senator Janet Cowell from Wake County.
- 3) On Page 6 of the motion, Paragraph 8, delete *and the housing report by sending the report insert and to attach a copy of the Housing Report developed by the Advisory Committee of the Commission.*
- 4) On Page 6, Paragraph 3, Line 5, change "the system's thinkers" to "system thinkers"

Chairman McElroy noted that the Strategic Planning Session held on Wednesday, February 14, 2007, was well attended and that it was a very productive session. Chairman McElroy also thanked Anna Scheyett and Jennifer Munford for helping to plan the session.

Anna Scheyett, Co-Chair, Rules Committee, presented an overview on the Strategic Planning Session and disseminated a summary report. Ms. Scheyett explained that they had solicited feedback from stakeholders and had received about 165 suggestions. Ms. Scheyett added that the issues were separated into domains where the Commission had rule making authority and domains in which they may be able to give input through the Advisory Committee.

Although a number of issues were highlighted, Ms. Scheyett provided the top five (5) which were identified at the session to be the most prominent. These include:

1. The rules on qualified professional/associate professional/paraprofessionals.
2. The rules regarding hospitalization and Local Management Entity (LME) authorization of hospitalization and discharge planning.
3. Criminal justice issues within both jails and prisons and people with issues in mental health, developmental disabilities, and substance abuse who are within the criminal justice system.
4. Concerns about Human Rights Committee Rules and Client Right Rules in general and their application.
5. Issues surrounding Consumer and Family Advisory Committees (CFACs) and the ability to provide input in the CFAC structure.

Ms. Scheyett concluded that since these were the top priorities that came out of the Strategic Planning Session, the Commission would address these items first.

DMH/DD/SAS Director's Report

Michael Moseley, Director of DMH/DD/SAS, began his report by saying that he had several items he wanted to present to the Commission. Mr. Moseley stated that the Division plans to cross walk the product of work from the Commission's Strategic Planning Session held on Wednesday, February 14, 2007, into the Division's Strategic Planning Process.

Mr. Moseley addressed some newspaper articles that had recently been released by the press. He began by discussing a memorandum issued regarding state psychiatric hospital admissions. The memorandum indicated that when admissions into the state psychiatric hospitals reach 110% of capacity of the acute adult admission units, the hospitals will suspend admissions. This decision stemmed from safety issues resulting when state psychiatric hospitals exceed capacity as it relates to dedicated beds. He noted the obligation to both staff and patients in avoiding the creation of an unsafe environment and described effective treatment as requiring staffing support sufficient to provide appropriate levels of support for the population served.

Mr. Moseley further stated that the Division is attempting to develop contractual arrangements with community hospitals, including private psychiatric hospitals, to divert admissions when state psychiatric hospitals *collectively* exceed capacity. Specifically, initial efforts will divert patients to other state psychiatric facilities that have not exceeded capacity before diverting them to other community resources. He described this as a proactive attempt such that the Division is responsive should patients need to be diverted.

Ellen Holliman, Commission member, encouraged consultation with the LMEs in identifying community resources while Mazie Fleetwood, Commission member, suggested that the impact upon consumers must likewise be considered. Ms. Fleetwood also commented that the build-up and development of community resources requires a concerted effort. Mr. Moseley confirmed that these concerns will be addressed but emphasized the need to develop an immediate response to the issue. Mr. Moseley reported that facilities are losing staff due to staff burn out and staff departures. He advised the Commission that the Division is trying to get a handle on the situation and is fully aware of this issue.

Ms. Holliman asked Mr. Moseley if the Division was looking at admissions to the Alcohol and Drug Abuse Treatment Center (ADATC) and to provide a status report in terms of people with substance abuse problems being able to go straight there. Mr. Moseley responded that this was part of the capacity issue that the Division struggles with because it is not operational yet. For instance, there are only ten (10) operational beds at Julian Keith Facility in Black Mountain. As a result, the Division is working on the broader continuum of the services for individuals of mental illnesses, developmental disabilities and substance abuse.

Commission member Buren Harrelson asked Mr. Moseley if the Division requested additional funding to help address the problem regarding hospital admissions. Mr. Moseley stated that the Division is under a legislative mandate to downsize and transfer dollars to the community. As a result, the Division has downsized an excess of 440 long-term care and geriatric psychiatric beds. However, the Division has not downsized any of its acute admissions beds. He further added that acute admissions beds will not likely be downsized until appropriate community options have been identified.

Ann Forbes, Commission member, asked if the Division had data to show how many patients were re-admissions into the hospitals and suggested that constant re-admissions stemmed from a lack of services available within the community. Mr. Moseley responded that the data was available and current information suggests that North Carolina is below the national average in terms of recidivism rates. He indicated that the overriding issue is that of capacity and that part of the recidivism issue is reflective of support available within the community rather than services being provided.

Leza Wainwright, Deputy Director, NC DMH/DD/SAS discussed an appropriation made by the NC General Assembly. According to Ms. Wainwright, the state legislature appropriated \$7 million in recurring funds to fund crisis services for Non-Medicaid eligible individuals and \$5,250,000 in one time funds to spark the development of those crisis services. Ms. Wainwright further stated that they directed the Division to work with the Local Management Entities (LMEs), to group them into fifteen (15) crisis regions by August 15th. The Division then had to enter into a contract with a consultant to assist the LME regions in developing their crisis plans through a request for proposal process. The Technical Assistance Collaborative (TAC), based in Boston, was selected to help with that regional planning process.

Among the challenges faced is the finite set of funding. The LMEs have been challenged not to feel constrained by that funding limit but to reflect what is needed to address all crisis needs in the community. Ms. Wainwright stated that the Division is requiring the LMEs to ensure that community hospitals are a part of the discussions. Another issue that directly impacts the state hospital admission is the fact that the number of community inpatient beds have been decreasing. Ms. Wainwright stressed that there is an increase in the population coupled with a decrease in community resources. It is hoped that the crisis plans will address that and other pertinent issues.

Ms. Wainwright further stated that LMEs regional plans are not due until March 1, 2007, based upon the legislative deadline. She noted that there is a requirement that if a LME and its region proposes a physical structure, facility based crisis unit or an inpatient unit, the LME must explain how it will be sustainable.

Mr. Moseley proceeded to discuss the Strategic Planning Process which was mandated by the NC General Assembly. This Strategic Planning Process will operate from July 2007 thru 2010 and the Division will be working with an outside consultant on the project. Ms. Wainwright directed everyone's attention to a handout titled "*DMH/DD/SAS State Plan 2007-2010 Priority Plan Objectives*". The columns on the left of the grid listed areas the General Assembly mandated the Division to report on. Ms. Wainwright indicated that, for the 2007 – 2010 plans, the Division had decided to concentrate on the appropriate growth and stabilization of a high quality provider system. Ms. Wainwright added that this was a good fit with what was discussed the day before at the Commission's Strategic Planning Session and that the Division would be weaving recommendations from that session with its own.

Ms. Wainwright explained that Division staff would be examining the issues first and will be using the External Advisory Team (EAT), the state CFAC, and Area Directors to review and comment on the Strategic Plan. The goal is to have the first draft available for review and comment by April 1st. Ms. Wainwright further stated that the Division has worked with the LMEs to ensure that local business plans developed by the LMEs will reflect the same priority items as those indicated in the State Plan.

Mr. Moseley addressed the State Plan Amendment change which was due to become effective on February 1, 2007; the effective date has been delayed until April 1, 2007. This amendment change speaks to guardians and family members as care providers and pertains to individuals with Developmental Disabilities who are being served through the Community Alternatives Program For Persons With Mental Retardation and Other Developmental Disabilities (CAP-MR/DD) Medicaid Waiver Program. Mr. Moseley further stated that Dr. Allen Dobson, Director, Division of Medical Assistance and the Assistant Secretary for Health Policy, reported to the Legislative Oversight Committee that its implementation would continue to be delayed until an alternate policy position that better accommodates the needs throughout the system is identified.

Ms. Wainwright emphasized that the conflict stems from guardians serving as providers as well as the number of hours worked. In many instances, the number of hours worked raised issues regarding the quality of care provided. She added that, in response to the concerns expressed by parents and guardians, the Division is proposing placing a monthly limit on the number of hours an individual can work as an alternative to the weekly limit originally proposed.

Jerry Ratley, Commission member, asked if the Division tracked cases in which the family member is the service provider. Ms. Wainwright responded that the Division was not aware

previously of the cases in which the families acted as service providers because all these parents or guardians actually work for service provider agencies. However, as part of the change announced in October, the Division will now require this information to be noted on the Person Centered Plan. This requirement will help provide statistics on the number of family members and/or guardians serving as service providers.

Ms. Wainwright noted that Secretary Carmen Hooker Odom announced that the Division would be engaging in a focused review of Community Support Services. This is a service for individuals with mental illness and substance abuse problems. This review is an effort to provide a baseline of the service as provided in an effort to determine whether the service is being delivered as intended. The Division is still very supportive and committed to the availability of Community Support Services but wants to ensure that it is being delivered in the community appropriately. The review is to be completed by March 1, 2007 and will consist of a review of 150 providers that represent the top billers of Community Support Services with some geographic diversity. Based upon the results of the review, the Division will look at what changes are needed in the delivery of the Community Support Services.

Floyd McCullouch, Chair of the Rules Committee, asked if the NC Division of Medical Assistance (DMA) set the rate for services. Ms. Wainwright responded that DMA does set the rate in conjunction with the Department's rate setting staff. She further added that DMA also consults with providers for input on whether or not the rate is adequate.

Mr. Moseley discussed the level of stakeholder input into rules being drafted for consideration by the Commission. Mr. Moseley added that they had reconstituted the old stakeholders group and renamed it the External Advisory Team. Mr. Moseley explained that the Division's intent was to pull together a group that they felt could be as representative as possible of the broad system partners. Mr. Moseley advised that in instances where the External Advisory Team can meet in advance of the Rules Committee meetings, they plan to review the initial draft rules before the meeting. Mr. Moseley also stated that in addition to the External Advisory Team, the Division will also be processing drafts through the State CFAC. He added that they are in discussions with the Chairman of State CFAC to discuss review of rules by that body. A member of the State CFAC attends the Executive Leadership Team Meetings of the Division on a monthly basis. Mr. Moseley cautioned that not all rules have had that same level of input from stakeholders because they are being transitioned from policy to rules. Mr. Moseley indicated that efforts are also made to seek input from targeted reviews based upon the issues being addressed. Mr. Moseley also mentioned that the Division will engage the Provider Action Agenda Committee in a rule review process.

Chairman McElroy asked how long the External Advisory Team had been in existence and operational. Mr. Moseley responded that it has been in place for approximately one year. Mr. Harrelson asked whether it was a conflict of interest for a Commission member to sit in on one of the meetings of the External Advisory Team. Mr. Moseley said that any Commission member could attend the meetings.

Laura Coker, Commission member, asked which of the organizations would be the best way for people in communities outside of Raleigh to give feedback to or become involved on the External Advisory Team. Ms. Coker also expressed concern that agencies receiving funding from DHHS may be uncomfortable expressing issues. Chairman McElroy responded that the Commission encourages everyone to speak up and provides opportunities for individuals, as well as entities, to address the Commission. Mr. Moseley encouraged the Commission to invite the Chair of the State CFAC to address its members. Robin Huffman, Ex-Officio Member, assured the

Commission that those chosen to serve on the EAT and other reviewing bodies have an obligation to their agencies to represent their interest and do not function as “yes men beholden to the Division”.

Bob Hedrick, Ex-Officio Committee Member and Executive Director of the NC Providers Council, stated that the groups represented on the External Advisory Team are very significant groups in North Carolina. He also added that one difficulty with the team is that some of the groups on the list do not look at policy issues as their function and very few look at rules in any systematic way. Mr. Hedrick does not feel that providers are adequately represented commensurate with their role in the system. Mr. Hedrick says that he would support having a provider from the Provider Action Agenda to be a representative to the External Advisory Team.

Ms. Fleetwood asked that the possibility of proposed rules being reviewed by the External Advisory Team prior to being presented to the Rules Committee be explored.

Mr. Harrelson thanked Mr. Moseley and his staff for bringing back the stakeholder involvement. He further stated that as a member of the Commission, as well a consumer of services, it is very important that the individuals we serve have more of a voice in what is going on.

Chairman McElroy asked that the Chair of the State CFAC be invited to address the Commission, for approximately 30 minutes, during its May meeting.

The commission meeting adjourned for lunch at 12:00 noon.

Advisory Committee Report

Dr. Marvin Swartz, Chairman of the Advisory Committee, provided an update on the January 18, 2007 Advisory Committee meeting which included brief details about the work of each of the four subcommittees and the guest speakers at the last meeting.

A resolution on “Assuring Quality and Accountability for Enhanced Services” was also presented as proposed by the Advisory Committee. A Commission member stated that he was in full support of the resolution, but wanted to offer a small editorial change to the resolution. In the first paragraph change “has” to “had”. He stated that this would make it clear that it is in the past tense. In the second paragraph remove the word “has”. Anna Scheyett and Dr. Swartz refrained from voting to avoid the appearance of a conflict of interest.

The resolution appears below.

RESOLUTION

Assuring Quality and Accountability for Enhanced Services

The Division of MH/DD/SAS had taken important steps toward assuring a highly trained workforce for consumers of Medicaid enhanced services by establishing a process to recruit, select, and train highly qualified masters level trainers. Once trained these individuals were endorsed by the Division and provided training to educate providers and their staff on the enhanced services.

Recently, DMH/DD/SAS had suspended this process and no longer endorses trainers. Suspending this endorsement process and permitting a less rigorous and unexamined training process to occur is a major setback in establishing accountability for the quality of MH/DD/SAS services. This decision was due, in part, to the lack of an administrative rule that would allow the Division of Medical Assistance and DMH/DD/SAS to enforce this endorsement process. In this instance, DMA apparently has rule-make authority as the State Medicaid Agency.

At this point it is critical that the Department of Health and Human Services (DHHS) re-establish accountability for training and assure that its Divisions jointly develop a coordinated plan to assure quality and accountability for these critical services. The Commission urges the leadership of DHHS to rapidly move forward to having DMA promulgate rules that will enforce training requirements and other accountability measures to ensure the highest quality of care for all clients of the public MH/DD/SAS service system.

Upon motion, second, and unanimous vote, the Commission passed the resolution with the changes recommended.

Rules Committee Report

Floyd McCullouch, Rules Committee Chairman, presented the Rules Committee report for the January 17, 2007 meeting. Mr. McCullouch stated that the summary of the Rules Committee meeting will be addressed as part of the day's agenda during the meeting during the rules review.

Adopt 2007 Proposed Meeting Schedule

Steven Hairston, NC DMH/DD/SAS, Operations Support Section Chief, presented the Commission with the 2007 meeting schedule for full adoption. Mr. McCullouch asked if it was possible to have a meeting outside of Raleigh after the legislature adjourns. Chairman McElroy said that they would look into it for the Spring of 2008 and possibly hold it in Edenton.

Upon motion, second, and unanimous vote, the Commission adopted the 2007 Meeting Schedule.

Presentation on "Training for Employees of Establishments where Products Containing Pseudoephedrine are Sold"

Sonya Brown, DMH/DD/SAS Justice Systems Innovation Team Leader, provided a brief presentation on "Training for Employees of Establishments where Products Containing Pseudoephedrine are Sold" (see attachment). Jerry Ratley noted that some individuals asked why the federal training model was not adopted. Mr. Ratley explained that there are differences between the federal and the state regulations. The state can be as strict as it wants to be but can not be any more lenient than the federal regulation. As it relates to the sell of pseudoephedrine, North Carolina does have some stricter regulations than the federal law mandates; thus, there was a need for an additional state training model that would take into account those regulations.

Ann Forbes stated that there were a number of different names for these products, and she wanted to know if would be helpful for people to know what they are commonly called. Sonya Brown stated she would add an extra bullet for the common names on page three (3) of the training manual under "What are pseudoephedrine products used for?" A statement that the list is not an exhaustive one will also be added.

Upon motion, second, and unanimous vote, the Commission adopted the training program with the noted addition.

Proposed Adoption of 10A NCAC 271 .0300 Uniform Portal

Dr. Michael Lancaster, DMH/DD/SAS Chief of Clinical Policy, presented the proposed adoption of the uniform portal rules. It directs the Secretary to adopt rules for the implementation of the uniform portal process. Dr. Lancaster presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Mazie Fleetwood presented the Commission with a resolution. Ms. Fleetwood stated that the resolution was presented in the spirit of the Commission's obligation and statutory authority to advise the Secretary regarding the provision and coordination of MH/DD/SA services. Ms. Fleetwood further stated that the resolution addressed the screening, triage, and referral process that Dr. Lancaster had previously spoken about and specifically relates to proposed rule 10A NCAC 271 .0304. Mark Botts from the UNC Institute of Government was consulted and assisted in drafting the resolution, which incorporates a legal opinion. Mr. Botts' comment to the Commission was "If the Commission chooses to adopt the proposed resolution it will be taking a position that is legally sound and reasonable based on the NC statutes".

Ms. Fleetwood also added that this issue was discussed by the Legislative Oversight Committee (LOC) this year. The issue was to clarify the screening, triage, and referral (STR) process in the state and that Representative Verla Insko has indicated that she supports this resolution 100%.

Ms. Fleetwood stated it is the view of the Commission that the proposed rule and any other similar rule would be contrary to and in conflict with the policy of the NC General Assembly as expressed in statutory law. Specifically it is contrary to the mental health system reform principal of separating management functions, including STR, from service provision functions as the proposed rule permits a service provider to perform the function.

Ms. Fleetwood made a motion that the Commission request the Secretary to withdraw proposed rule 10A NCAC 271 .0304(c) and any other proposed rule that would have a similar effect. Ms. Fleetwood also asked the Commission to adopt the resolution.

Mr. McCullough asked about the letter from Dr. Dobson (see attached letter dated February 15, 2007 from L. Allen Dobson, Jr., M.D.). Chairman McElroy responded by saying that the letter did not speak to the issue of the motion and further stated that the issue before the Commission at this time is whether the Secretary has the authority to say who can and cannot be a portal of entry.

Ms. Scheyett asked whether STR is a Medicaid reimbursable service that people can bill for. Ms. Scheyett continued to say that if it is not billable, then it is not a DMA service, it is a LME function.

Chairman McElroy further stated that if the Commission adopted the resolution they would be issuing an opinion in its advisory capacity to the proposition that screening, triage and referral is not a function of the Secretary, but is a function of the local LME.

Laura Coker stated that the issue of fairness and quality is what everyone is concerned about. Ms. Coker went on to say that we need to be certain that LMEs will really work together for the sake of quality assurance.

Ms. Fleetwood stated that she did not want anyone to think this resolution is not in favor of a uniform portal system.

RESOLUTION

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, pursuant to its authority under G.S. 143B-147(a)(3) to advise the Secretary of the Department of Health and Human Services regarding the provision and coordination of mental health, developmental disabilities, and substance abuse services, does hereby declare:

WHEREAS:

In 2001 the North Carolina General Assembly adopted legislation (S.L. 2001-437) amending G.S. 122C for the purpose, among other things, of separating the *management and service provision* functions of the publicly funded MH/DD/SA system. Under the 2001 law, the entity performing system management and oversight cannot be the same entity providing direct services to consumer without a waiver from the North Carolina Secretary of Health and Human Services.

In 2006 the North Carolina General Assembly enacted legislation (S.L. 2006-142) reaffirming its intent that local government – in the form of an area authority, county program, or consolidated human services agency – is responsible for performing the management and oversight functions of the public system for MH/DD/SA services at the community level. This law refers to these local government entities as “local management entities.”

The North Carolina General Assembly has declared, pursuant to G.S. 122C-115.4, that an LME’s management functions include, among other things, implementing procedures for citizen access to services that must include a screen, triage, and referral (STR) process available 24 hours a day, seven days a week.

The North Carolina General Assembly has declared, pursuant to G.S. 122C-115.4, that the Secretary cannot remove management functions from an LME except on a case-by-case basis and under specific circumstances prescribed the statute.

The North Carolina General Assembly, pursuant to G.S. 122C-115.4, has granted local management entities the discretion and authority to contract with other public and private entities for the performance of LME functions, including STR, designated in G.S. 122C-115.4.

Pursuant to the law cited in the foregoing paragraphs, it is the policy of the State of North Carolina that STR is a local government function whose performance is specifically delegated to local management entities. Further, it is the policy of the State of North Carolina that the discretion and authority to have STR performed by an entity other than an LME belongs to the LME, through its contracting authority, except where the Secretary exercises the Secretary’s statutory authority to remove the STR function from a particular LME.

The Secretary has proposed a rule, 10A NCAC 27I .0304(c), that would authorize entities other than LME (a Medicaid enrolled provider or other provider of services to LME consumers) to perform STR. Under this proposed rule, this authority would exist even if the LME does not exercise its authority to contract with the provider for the performance of STR and even if the Secretary has not exercised authority to remove the STR function from a particular LME.

THEREFORE, BE IT RESOLVED:

1. It is the view of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services that proposed rule 10A NCAC 27I .0304(c), and any proposed rule of similar effect, would be, if adopted, contrary to and in conflict with the policy of the North Carolina General Assembly as expressed in statutory law.
 - a. Proposed rule 10A NCAC 27I .0304(c) is contrary to the mental health system reform principle of separating management functions, including STR, from service provision functions, as the proposed rule permits a service provider to perform a function defined by law as a management function.
 - b. Proposed rule 10A NCAC 27I .0304(c) is in conflict with the statutory law that delegates the management function of STR to local management entities.
 - c. Proposed rule 10A NCAC 27I .0304(c) usurps the authority of each LME to determine when and whether to have another entity implement STR on its behalf through the exercise of the LME's contracting authority.
 - d. Proposed rule 10A NCAC 27I .0304(c) allows for the indirect removal of an LME management function under circumstances not allowed under the statute that provides for removal of LME functions.
2. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services requests the Secretary of the Department of Health and Human Services to withdraw proposed rule 10A NCAC 27I .0304(c) and any other proposed rule that would have a similar effect as 10A NCAC 27I .0304.

Upon motion, second, and majority vote, the Commission adopted the resolution with a count as follows: 15 in favor, 2 in opposition, 2 abstentions - Ellen Holliman and Martha Martinat

Proposed Adoption of 10A NCAC 26C .0600 Removal of LME Functions

Dick Oliver, Team Leader of the LME Systems Performance Team, DMH/DD/SAS, presented the proposed adoption of the Removal of LME Functions rules. Mr. Oliver explained that the rules address the following: definitions of terms, the process for notifying the LME of the deficient performance, the description of the process, the extent of technical assistance that they would provide (up to six months) and the actual process of removal of a function.

Ms. Fleetwood raised a question regarding .0605, line 7, number 1. Ms. Fleetwood asked why the language could not say “achieves and maintains the required outcomes on the designated performance by the end of the six month period”. Ms. Fleetwood stated that the two months was confusing. Mr. Oliver responded that this is about providing the focused technical assistance and that if they achieve the desired outcome for two months in a row, then the focused technical assistance can end, or the Division can continue that focused technical assistance for up to six months.

Ms. Fleetwood asked another question regarding .0606 and the right of the LME to appeal the removal of a LME function. Ms. Fleetwood had some concerns that there is not an appeal process for the LME after the removal. Chairman McElroy informed Ms. Fleetwood that LMEs do have the right to appeal through the Office of Administrative Hearings.

A question was raised concerning the language in the statute concerning three (3) consecutive months and the language in .0606 referencing two (2) consecutive months. Mr. McElroy asked Cindy Kornegay, the Rules Coordinator from DMH/DD/SAS, to research the distinctions and provide the Commission with an explanation when the proposed rule comes back after the comment period for final approval.

Ms. Scheyett asked how does a LME get its function back after it has been removed. Ms. Scheyett was told that if a LME loses a function that they are no longer paid to do, that it would be hard to imagine the LME doing that function well enough to get it back.

Ms. Holliman made a point on .0606 regarding the LME being considered to have a material breach if the LME fails to achieve and maintain for a period of two consecutive months. Ms. Holliman would like this to be looked at for a longer period of time.

Upon motion, second, and majority vote, the Commission approved the proposed adoption for publication of this rule. There were 2 abstentions: Ellen Holliman & Laura Coker.

Proposed Adoption of 10A NCAC 27G .0212 Disclosure of Financial Interest

Jim Jarrard, DMH/DD/SAS, Team Leader of the Accountability Team, presented the proposed adoption of the Disclosure of Financial Interest rule. The intent is to require those practitioners who refer clients to disclose when there is any financial interest in the agency.

Upon motion, second, and unanimous vote, the Commission approved the proposed adoption for publication of this rule.

Proposed Adoption of 10A NCAC 271 .0102 and .0201 LME Accreditation

Jim Jarrard presented the proposed adoptions of the LME Accreditation rules. The proposed rule satisfies requirements established in Session Law 2006-142 to ensure that all policies established in Communication Bulletins published by DHHS on mental health reform have supporting rules. Communication Bulletin #50 requires LMEs system management functions to be accredited.

Ellen Holliman stated that a loss of accreditation could be a reason for loss of a LME function. She stated that she did not have a problem with doing national accreditation. Ms. Holliman further stated that the issue at hand was that there was communication from the Division at this time saying that they were not moving forward at the present time. Ms. Holliman questioned whether LMEs were going to have to do this or not and what was the Division's position on the timeline. Mr. Jarrard answered that the Communication Bulletin that Ms. Holliman is referring to does not say that the Division will not be doing it, it states that the Division will be delaying it. Ms. Holliman recommended the rule be suspended until clarified. Mr. Jarrard presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Adoption of 10A NCAC 27G .0211 Provider Accreditation

Jim Jarrard presented the proposed adoption of the Provider Accreditation rule. The proposed rule satisfies requirements established in Session Law 2006-142 to assure that all policies established in Communication Bulletins published by DHHS on mental health reform have supporting rules. There is a requirement that providers of services identified in DMA Clinical Policy 8A and subsequent amendments to that policy become nationally accredited within three (3) years of enrollment as a service provider. Mr. Jarrard presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Repeal of 10A NCAC 27 G .0700 Accreditation of Area Programs and Services

Jim Jarrard presented the proposed repeal of Accreditation of Area Programs and Services rule. These rules no longer apply to the MH/DD/SA Service system, since most LMEs have divested themselves of service provision, and are dedicated to management of local MH/DD/SA service system issues. Also, the use of the term "accreditation" in this content is confusing, since accreditation in current MH/DD/SA reform is a status conferred on a LME or a MH/DD/SA service provider by a national accreditation agency, whereas the term in these rules primarily applied to assuring compliance with current rules and regulations. Mr. Jarrard presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Repeal of 10A NCAC 281 .0401 Firearms – State Facilities

Lisa Haire, DMH/DD/SAS, Neuro-Med Treatment Centers, presented the proposed repeal of the Firearms – State Facilities rule. The proposed repeal is necessary to update the requirements concerning firearms and State facilities. The current rule was adopted in 1976 under the rulemaking authority of the Commission for MH/DD/SAS. S.L. 1985-589 repealed previous mental health statutes codified in G.S. 122 and created a new Chapter, G.S. 122C-122.1(a)(10) states the Secretary shall operate State facilities and adopt rules pertaining to their operation. Therefore, it is necessary that the Commission for MH/DD/SAS repeal the current rule.

Upon motion, second and unanimous vote, the Commission approved the proposed repeal of this rule.

Proposed Adoption of 10A NCAC 281 .0402 Firearms – State Facilities

Ms. Haire presented the proposed adoption of Firearms – State Facilities rule. The proposed adoption is necessary to update the requirements concerning firearms and State facilities. Ms. Haire presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Repeal of 10A NCAC 27G .1500 Intensive Residential Treatment

Dr. Lancaster presented the proposed repeal of Intensive Residential Treatment rules. These rules need to be repealed because two new categories were developed in rules 10A NCAC 27G. 1800 and 10A NCAC 27G. 1900 to replace these rules. The new rules are not in effect; therefore these rules need to be repealed. These are no longer pertinent rules and need to be repealed.

Upon motion, second and unanimous vote, the Commission approved the proposed repeal of this rule.

Proposed Adoption of 10A NCAC 26C .0700 Requirements for Endorsement of Provider of MH/DD/SA Services

Mabel McGlothlen, DMH/DD/SAS, LME Systems Performance, presented the proposed adoption of Requirements for Endorsement of Provider of MH/DD/SA Services rules. The proposed rules establish requirements for provider organizations who seek to provide MH/DD/SA services. Session Law 2006-142 (House Bill 2007) establishes the primary functions and responsibilities of LMEs. The List of primary functions of the LME includes provider endorsement. Provider endorsement is intended to insure that providers of MD/DD/SA services are in compliance with state and federal laws and regulations in order to provide services in a manner consistent with the reform. It provides the LMEs with objective criteria to determine the competency and quality of providers of Medicaid services. Ms. McGlothlen presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Ms. Holliman asked if consideration could be given to adding a line that says “*the provider organization shall agree to accept all sources of reimbursement*” in .0703?. She also suggested adding “(h) A LME that holds a memorandum of agreement with a provider that has been endorsed by another LME has the authority to terminate the MOA when the established performance standards for the service delivery are not met in their Catchment area”.

Bob Hedrick provided a handout with comments on the proposed rules from his organization that he asked the Commission to review. This is a Secretary rule and before the Commission for information purposes.

Martha Martinat asked that her handout on “*NC Public Mental Health Reform: Impact on Reimbursement Resources*” and her resolution, which was untitled, be referred specifically to the Advisory Committee. Ms. Martinat further stated that this information was only for the Commission members. The resolution was not discussed by the Commission.

Public Comment

Dr. Kent Earnhardt disseminated brochures on the Protection and Advocacy for Individuals with Mental Illness (PAIMI) and the Governor’s Advocacy Council for Persons with Disabilities.

The meeting adjourned at 3:10pm.